LEGAL INDEX AND DIGEST OF VOLUME XXXVI.

The following table shows the page at which each monthly issue of the JOURNAL during the year 1919 begins and ends:

January	1-78	May	307-384	September	647-732
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The following index and digest contains the legal items which have appeared in the BANKING LAW JOURNAL during 1919.

The entire arrangement, including the numbering of the sections, follows the plan of the second edition of the BANKING LAW JOURNAL Digest. The Digest was published in 1919 and contains a classified arrangement of all legal decisions published in the JOURNAL from the time of its establishment in 1889 down to 1919. It is a bound volume of 408 pages, made up of digests of more than 5,000 decisions, the price of it being $5 per copy.

The following index brings the Digest down to January, 1920, and may be used in conjunction with the Digest. To illustrate, one may turn from a decision under any section number in the index here published to the same number in the Digest and there find all decisions on the same point, published during the past thirty years. The Digest will be sent on approval to any subscriber of the JOURNAL.

ACCEPTANCE.

§7. Acceptance obtained by fraud.

In an action by the purchaser of accepted bills of exchange, customarily known as acceptances, where the acceptor shows that the acceptances were obtained by false representations as to the quality of the goods for which they were given, the burden is on the purchaser to show that he bought them in good faith, before maturity and for value. Metropolitan Discount Co. v. Baker, N. C., 97 S. E. Rep. 495. 36 B. L. J. 194.

§16. Promise or agreement to accept.

The defendant bank telegraphed the plaintiff company that it would accept a draft drawn on one of its customers against a shipment of lemons. When the shipment arrived it was found that it was not up to contract and the consignee refused to receive it. It was held that the bank's promise to accept was not equivalent to an actual acceptance, under Section 223 of the Negotiable Instruments Law. Lemon Importing Co. v. Garfield Sav. Bank, 173 N. Y. Supp. 551. 36 B. L. J. 163.

§23. Bank dealing in acceptances.

A bank, which is authorized by its charter to do a general banking business, has authority to discount and transfer acceptances, and where it has discounted and transferred such acceptances to a purchaser for value, it will be held liable thereon. Sherrill v. American Trust Co., N. C., 97 S. E. Rep. 471. 36 B. L. J. 195.

AGENTS.

§47. Agent's authority.

A traveling salesman has implied authority, as agent, to bind his principal by a stipulation in a contract of sale of goods, giving to the vendee right to return the goods, within a reasonable time, if found to be unsatisfactory. But he has no implied authority to stipulate for an unconditional and unlimited right of return. It must be reasonable and usual in its character. DeWitt Shoe Co. v. Adkins, W. Va., 98 S. E. Rep. 209. 36 B. L. J. 253.

§48. Agent's authority to indorse.

A collector employed by the plaintiff wrongfully indorsed checks received from the plaintiff's debtors with the plaintiff's name, adding thereto "Per E. H. Slates." Some of these he cashed at the defendant bank and others he cashed at other banks which sent them to the defendant for collection. The defendant collected all of the checks from the drawee's thereof. The agent absconded with the proceeds. It was held that the fact that the agent had authority to make collections in the form of checks did not constitute authority to indorse them, and that the defendant was liable to the plaintiffs for the amount of the checks thus wrongfully indorsed by the agent. Schaap v. State Nat. Bank, Ark., 208 S. W. Rep. 309. 36 B. L. J. 259.

The secretary of the plaintiff corporation was authorized to indorse in blank, for purpose of deposit, checks payable

to the company. He indorsed a number of such checks and deposited them to his own credit in the defendant bank which collected them and paid the proceeds over to the secretary. It was held that the defendant was estopped to claim that the secretary exceeded his authority and that the defendant bank was protected. This rule did not apply, however, as to certain checks deposited at a time when the secretary was indebted to the defendant, the proceeds of which the defendant applied to the secretary's debt. For the amount of these checks the defendant was held liable. Santa Marina Co. v. Canadian Bank, 254 Fed. Rep. 391. 36 B. L. J. 246.

ALIENS.

§50. Suit against alien.

An alien enemy may be sued in the courts of the United States and is entitled to defend before the entry of judgment. No proceedings, however, should be taken other than such as are necessary to preserve the rights of the parties in statu quo, intercourse between residents of an enemy country and the United States being prohibited by the Trading with the Enemy Act. Watts Co. v. Unions Austrica, U. S., 39 Sup. St. Rep. 1. 36 B. L. J. 29.

ALTERED PAPER.

§56. Alteration as to parties.

A note which the defendant signed as accommodation indorser for the maker was payable to the order of the bank at the bank. Upon the bank's refusal to discount the note the maker struck out the bank's name as payee, and place of payment, and substituted the plaintiff's name as payee. It was held that this was a material alteration which rendered the note void in the hands of the plaintiff and discharged the indorsers. Muse v. Clark, S. C., 98 S. E. Rep. 850. 36 B. L. J. 360.

§68. Rights of holder in due course.

Where a note, after leaving the maker's hands, is wrongfully raised in amount and is subsequently transferred to a holder in due course, the latter may enforce the note against the maker for the amount for which it was originally made. Smith, Kline Co. v. Freeman, N. J., 106 Atl. Rep. 22. 36 B. L. J. 514.

ATTACHMENT, GARNISHMENT AND EXECUTION.

§83. Liability of bank as garnishee.

The defendant bank was served with papers in garnishment proceedings, instituted by a judgment creditor of one of the defendant's depositors. The bank, although having knowledge that the deposit was claimed by the plaintiff, to whom it had been assigned by the depositor, did not appear in the garnishment proceedings but suffered judgment to be taken by default and subsequently paid the money into court. It was held that if the plaintiff's right to the deposit was superior to that of the attaching creditor he was entitled to recover from the defendant bank. Jorgenson v Farmer's & Merchants' Bank, N. D., 170 N. W. Rep., 894. 36 B. L. J. 321.

The seller and purchaser of a business agreed that the purchase price should be deposited in the defendant bank and paid out to creditors of the seller on checks signed by both the seller and purchaser. The bank accepted the deposit upon these terms. Later a judgment creditor of the seller sued out a writ of garnishment and served it upon the bank. The bank afterwards paid out the entire amount upon checks signed in accordance with the agreement. It was held that the bank was protected in paying these checks. Foscue v. Provident Nat. Bank, Tex., 210 S. W. Rep. 555. 36 B. L. J. 500.

§86. Execution.

The plaintiff assigned to the defendant bank an endowment policy as security for a loan. When the policy matured the insurance company sent to the bank a check payable to the bank and the plaintiff. The plaintiff endorsed it, instructing the bank to collect the proceeds and pay the loan and saying that he would come later and get the balance. The next day the sheriff demanded the balance in behalf of a judgment creditor of the plaintiff and the bank paid over the money without notifying the plaintiff. It was held that the bank stood toward the plaintiff in the position of a trustee, and was liable for the amount, inasmuch as the proceeds of the policy were by statute exempt from execution. Hing v. Lee, Calif., 174 Pac. Rep. 356. 36 B. L. J. 35.

BANKING.

§106. Right to sue in foreign state.

The fact that a trust company, organized under the laws of the state of New York, in a single instance acts as trustee under a deed of trust for the holders of mortgage bonds, collects interest and takes title to property as security, which property is located in the state of California, and otherwise discharges the duties of a trustee, does not constitute a doing of business in the state of California, so as to deprive the trust company of the right to bring suit in the California courts

to foreclose the deed of trust, without having first complied with the laws of California regulating foreign corporations doing business within the state. Equitable Trust Co. v. Western Co., Calif., 176 Pac. Rep. 876. 36 B. L. J. 189.

The laws of Maryland provide that no foreign corporation shall transact business in that state until it shall have filed a certificate and complied with certain other requirements. The plaintiff trust company, organized in the District of Columbia, acting as trustee under a will, sold real property in Maryland and, upon the vendee's refusal to take title, brought suit to compel him to do so. It was held that the fact that the plaintiff had not complied with the statutory formalities did not preclude it from making the sale or bringing the suit. The statute does not apply to casual or occasional transactions. Baden v. Washington L. & T. Co., Md., 105 Atl. Rep. 860. 36 B. L. J. 424.

BANKRUPTCY.

Filing petition in anticipation of inheritance.

An adjudication in bankruptcy will not be set aside because the bankrupt, at the time of filing the petition, knew that he would shortly inherit money from his mother who was then in such weakened physical and mental state that it would be impossible for her to alter a will in his favor which she had previously executed. In re Swift, 259 Fed. Rep. 612. 36 B. L. J. 823.

§113. Priorities between different parties.

The plaintiff sold goods to a customer but refused to deliver them until the customer would make a payment to apply on a bill already owing to plaintiff. The customer gave the plaintiff his check for part of his indebtedness, and the goods which he had bought were thereupon delivered to him. The check went to protest. Thereafter the customer became a bankrupt and absconded. It was held that the plaintiff, having made prompt demand for his goods, and the goods still being in the original boxes unopened, was entitled to recover them from the trustee of the bankrupt estate.. Mulroney Mfg. Co. v. Weeks, Ia., 171 N. W. Rep. 36. 36 B. L. J. 239.

A bank loaned money on a note payable to its order 90 days after date. Before the note fell due the bank indorsed it and sold it. At maturity the maker of the note called at the bank to pay it. The president pretended to look for the note and told the maker that it had been mislaid. The maker paid the amount due and the president said that it would be applied to the note as soon as it was found. A receiver was later appoined for the bank. It was held that the maker could recover the amount paid to the bank and was entitled to a perference over all creditors of the bank. State v. Farmers' & Merchants' Bank, Ind., 124 N. E. Rep. 501. 36 B. L. J. 877.

BILLS OF LADING.

§134. Rights of discounting bank as against creditor of shipper.

Where the drawer of a sight draft, with bill of lading attached, indorses the same and delivers it to the bank in regular course of business and receives credit for the amount thereof, which is checked out the following day, such transaction operates to pass the title to the property called for by the bill of lading to the bank, and where such bank forwards the draft to its correspondent at the place where the drawee resides for collection, and the same is presented and paid, the proceeds of the draft belong to the forwarding bank. Consequently the fund is not subject to garnishment proceedings by a creditor of the shipper. First Nat. Bank v. Stallings, Okla., 177 Pac. Rep. 373. 36 B. L. J. 173.

Criminal liability for forged bill.

The defendants were indicted under the Federal Bills of Lading Act for having issued a forged bill of lading without having made any shipment whatever. It was held that the Constitution authorizes Congress to make such a law and that the law was constitutional. U. S. v. Ferger, U. S., 39 Sup. Ct. Rep. 445. 36 B. L. J. 570.

BONDS.

§154. Validity.

The act authorizing the issue of $500,000 of county road bonds provided that $349,000 of the issue be used to retire certain township road bonds which had already been issued. A bank made a bid of par and accrued interest for the balance of the issue, which bid was accepted. The bank then raised the objection that the provision for the retirement of the township bonds was unconstitutional. The court held that the bank's bid was not affected by the validity of the retirement provision. It further held, that this provision was constitutional and that the entire issue was valid. Board of Commissioners v. Wachovia Bank, N. C., 100 S. E. Rep. 421. 36 B. L. 899.

§161. Fidelity bonds.

In applying for a bond to indemnify a bank against the dishonesty of its cashier,

the president signed a statement to the effect that the cash and securities would be examined weekly and compared with the books by the directors. Such examinations were not made. In applying for renewals of the bond the bank represented to the surety company that the cashier had always faithfully and honestly accounted for all property in his control. As a matter of fact, the directors and officers were aware that the cashier had repeatedly permitted overdrafts contrary to their directions. It was held that these misrepresentations relieved the surety company from liability on the bond. Fidelity & Deposit Co. v. Kane, Ky., 206 S. W. Rep. 888. 36 B. L. J. 103.

Sale of bonds with warranty.

A corporation sold bonds, representing them verbally and by letter to be absolutely good and a secure investment. The bonds turned out to be worthless. It was held that the purchaser was entitled to recover from the corporation the purchase price and interest thereon from the date of the purchase. Burtch v. Child Hulswit & Co., Mich., 174 N. W. Rep. 170. 36 B. L. J. 813.

CERTIFICATES OF DEPOSIT.

§167. Authority of officer to issue.

The president of the defendant bank was indebted to the plaintiff on certain land notes. He induced the plaintiff to accept in payment of the notes three certificates of deposit, for $2,000 each, which he signed as president of the bank. In an action against the bank upon the certificates, it was held that the plaintiff could not recover, unless the money had actually been deposited, as recited in the certificates, and that the burden of showing such deposit rested upon the plaintiff. First Nat. Bank v. Rust, 257 Fed. Rep., 29. 36 B. L. J. 559.

§170. Negotiability.

A certificate of deposit is negotiable although it provides that it is payable upon its return properly indorsed, that it shall bear interest at 2 per cent if left six months, that it shall be subject to the rules of the savings department, that no interest shall be paid for the fractional part of a month, and that interest shall cease one year from its date unless renewed. White v. Wadhams, Mich., 170 N. W. Rep. 60. 36 B. L. J. 181.

§177. Payment of certificate on forged indorsement.

A bank issued a certificate of deposit to a person who could not write. Someone stole the certificate, made a cross mark indorsement on it and collected it through the defendant bank. The issuing bank later paid the real owner of the certificate and sued the defendant. It was held that the defendant was liable. State Nat. Bank v. Freeman's Sav. Bank, 2 Dill. (U. S.) 11. 36 B. L. J. 861.

CERTIFIED CHECKS.

§198. Certification by telegraph and telephone.

The plaintiff bank, before cashing a check drawn on the defendant bank, wired the latter, "Will you pay check of Jas. W. Nall up to $2,000 for cattle?" The message went to the telegraph office nearest the defendant and was from there telephoned to the defendant. The defendant answered through the same channel, "We will honor James W. Nall's check for $5,000 when properly signed." It was held that this complied with the Negotiable Instruments Law requiring the acceptance of a bill to be in writing and signed by the drawee and that it was a binding certification. It was also held that the fact that the check was for $1,957.50 was immaterial. Selma Sav. Bank v. Webster Co. Bank, Ky., 206 S. W. Rep. 870. 36 B. L. J. 94.

§204. Certification of overdraft—rights of bona fide holder.

The cashier of a bank in Michigan, in violation of the banking laws, certified a check for a customer, whose deposit was much less than the amount of the check. After being indorsed by three parties, the check was delivered by the last indorser to the plaintiff in Arkansas, in payment for land. The plaintiff took the check without notice that it had been wrongfully issued. It was held that the defendant bank was liable on the check. Smith v. Hubbard, Mich., 171 N. W. Rep. 546. 36 B. L. J. 473.

CHECKS.

§214. Check as assignment.

The defendant drew a check on an out-of-town bank, which he had cashed at a local bank. After the local bank cashed the check a creditor of the defendant's garnished his deposit. It was held that when the local bank cashed the check it operated as an assignment of the deposit, to the amount of the check, and that the local bank was entitled to that amount of the deposit as against the garnishing creditor. This conclusion was reached notwithstanding the Negotiable Instrument Law which provides that a check does not operate as an assignment. McLain v. Torkleson, Ia., 174 N. W. Rep. 42. 36 B. L. J. 832.

§220. Check against insufficient funds—criminal liability.

In a criminal prosecution under the California statute, for issuing a check on a bank against insufficient funds, the fact that the bank is a corporation may be proved by verbal testimony. People v. Patterson. Calif., 183 Pac. Rep. 209. 36 B. L. J. 746.

Check payable after drawer's death.

A check on a bank, payable one day after the drawer's death, if founded on a sufficient consideration, is a valid commercial instrument and may be enforced against the drawer's estate. Keeler v. Hile's Estate, Neb., 172 N. W. Rep. 363. 36 B. L. J. 760.

COLLECTIONS.

§227. Duties of collecting bank.

A draft for a carload of meal was sent to the defendant bank for collection. The bank, believing that a memorandum attached to the draft was a bill of lading, without which the consignee could not get the meal, held it for ten weeks, expecting the consignee to come in and pay it. In some way the consignee obtained the meal and later died without paying the draft. It was held that the bank was liable to the shipper for the loss which he sustained. Feeders' Supply Co. v. First Nat. Bank, Kans., 176 Pac. Rep. 129. 36 B. L. J. 126.

The plaintiff gave a check to the treasurer of his club for dues. The bank in which the check was deposited sent it to the defendant bank for collection. The defendant presented it to the wrong bank, which returned it marked W. B., meaning wrong bank. The letters were not clear and the defendant, mistaking them for N. F., signifying no funds, wrote "Not sufficient funds" on the check and returned it. Had the check been presented to the drawee bank it would have been paid. It was held that, although the defendant was negligent, it was not liable to the plaintiff. There was no contractual relation between the parties and the defendant was under no duty or obligation to the plaintiff. Cohen v. Tradesmen's Nat. Bank, Pa., 105 Atl. Rep. 43. 36 B. L. J. 122.

§230. Lost paper; duty to make inquiry.

The defendant bank received a check from one of its depositors and forwarded it by mail to the plaintiff for collection. The plaintiff sent it direct to the drawee bank and in the course of business the credit, given by the plaintiff to the defendant, was balanced off by dealings between the two banks. In the meantime the depositor had checked the proceeds out of his account in the defendant bank. The check was not heard from and the plaintiff neglected to notify the defendant for 40 days that the check had been lost or had not been paid. It was held that the plaintiff was responsible. American Nat. Bank v. Savannah Trust Co., N. C., 98 S. E. Rep. 595. 36 B. L. J. 421.

§231. Taking steps to charge prior parties.

The plaintiff bank, being the holder of a note, forwarded it to the defendant bank for collection. The defendant forwarded the note to its correspondent at the place where the note was payable and the latter presented it. It was protested and notices of dishonor sent. The notice for one of the indorsers was sent to the defendant bank and the defendant did not forward it to the indorser or notify the bank. The indorser in question was discharged by the failure to give him notice and the plaintiff sought to hold the defendant liable. It was held that, in the absence of specific instructions, defendant was under no obligation to forward the notice to the indorser and that its failure to do this imposed no liability upon it. Farmers' Nat. Bank v. People's Nat. Bank, Pa., 106 Atl. Rep. 311. 36 B. L. J. 507.

§249. Contract against liability for correspondent's negligence.

The defendant bank received from the plaintiff bank a check for collection. The defendant acknowledged the check on a slip on which was printed a stipulation that it should not be responsible for the negligence of its correspondents. It forwarded the check and, after passing through the hands of two or three banks the check was lost. The drawer withdrew his funds and the check was never paid. The plaintiff was obliged to make good the amount to its depositor. It was held that the defendant was not liable to the plaintiff. It was protected by the stipulation against such liability. Farmers' State Bank v. Union Nat. Bank, N. D., 173 N. W. Rep. 789. 36 B. L. J. 766.

CONSIDERATION.

§266. Instances of insufficient consideration.

Where a person executes a note and delivers it to the payee in payment for goods furnished by the payee to a third person prior to the execution of the note, and such goods were not furnished at the request of the maker, the note is without consideration and cannot be enforced by the payee. Santikos v. Hamilton Grocery

Co., Tex., 208 S. W. Rep., 560. 36 B. L. J. 278.

§268. Instruments given to avoid criminal prosecution.

Where the consideration for guaranteeing a note is the dismissal of a criminal proceeding for embezzlement against the maker, the note is void. But, if there is no actual agreement and the note is simply given for the amount embezzled in the hope that the defendant in the criminal proceeding may fare better as a result and the criminal charge is later dropped, the note is valid and the guarantor is liable. Ogden v. Ford, Calif., 176 Pac. Rep. 165. 36 B. L. J. 112.

§269. Instruments given in gambling transactions.

The defendant signed a note payable to a person who was conducting so-called trade-increasing contests. The payee agreed in a separate instrument that, if the 0.75 per cent of the defendant's sales during the following year did not equal the face of the note, he would pay to the defendant the balance in cash. The payee transferred the note to a bank and the bank sold it to the plaintiff, a holder in due course. It was held that the transaction was not a "wager" or "bet" so as to render the note void under the Wisconsin gaming law. Stevens v. Freund, Wis., 171 N. W. Rep. 300. 36 B. L. J. 682.

CONTRACTS.

Arbitration.

A provision in a contract that any dispute arising out of it should be settled by arbitration, each party to name an arbitrator, and these two to name a third, will not oust the courts of their jurisdiction. Where one party commences suit the fact that he did not first demand arbitration is no defense. Queiroli v. Whitesides, Tex., 206 S. W. Rep. 122. 36 B. L. J. 354.

CORPORATIONS.

§280. Powers of corporations.

The defendant corporation was organized in 1886, under the laws of New York of 1875. Its charter authorized it to transact the business of registrar and transfer agent of other corporations. It was held that the company was not deprived of the right to exercise these powers by the general trust company law of 1887, or by the later banking laws of 1892 and 1914, granting similar powers to trust companies. People v. National Sec. Co., N. Y. Law J., Sept. 22, 1919. 36 B. L. J. 775.

§282. Foreign corporations.

See §106.

DELIVERY.

§297. Conditional delivery.

The defendant indorsed for accommodation notes made by a corporation of which he was president. The plaintiff bank agreed that it would not discount the notes, or any renewals thereof, until it secured the individual indorsement of the treasurer of the corporation. The bank took renewals of these notes which did not bear the treasurer's indorsement. It was held that the bank could not enforce the notes against the defendant. Jenkins v. National Bank, Md., 106 Atl. Rep. 174. 36 B. L. J. 478.

DEPOSITS.

§323. Deposits by trustees.

A trustee in bankruptcy deposited funds belonging to the estate in the defendant bank, the bank having notice of the character of the deposit. Some of the checks drawn against the deposit by the trustee were properly countersigned as required by General Order 29 of the General Orders in Bankruptcy. Other checks were not so countersigned and represented misappropriations by the trustee. It was held that the bank was liable to the surety on the trustee's bond for the amount of his misappropriations. Fidelity & Deposit Co. v. Queens Co. Trust Co., N. Y., 123 N. E. Rep. 370. 36 B. L. J. 488.

Trustees under a will had an account in the defendant bank, standing in the name of the estate which they represented. They drew checks against the account, payable to the order of one of their number, and fraudulently misappropriated the proceeds. It was held that the bank could not be made liable to the estate for the amount of the appropriation, without proof that it had knowledge that the trustees had drawn the checks in the manner described with the intention of wrongfully appropriating the proceeds. Taylor v. Astor Nat. Bank, 174 N. Y. Supp. 207. 36 B. L. J. 207.

§324. Deposits by guardian.

Where a bank knowingly permitted a guardian to deposit guardianship funds to her individual account and she checked the money out for her individual use, the bank was held liable to the ward. Blaunton v. First Nat. Bank, Ark., 206 S. W. Rep. 745. 36 B. L. J. 91.

A savings account in the name of a general guardian was paid out by the bank on four forged drafts, purporting to bear the cross mark signature of the guardian and to be acknowledged before

a notary. The person who presented the drafts also produced the pass book, which was obtained in some manner from the surety company which furnished the guardian's bond. Two of the drafts bore the stamped approval of the surety company, which the bank knew was a requirement of the company. The other two did not bear such approval mark. It was held that the savings bank was liable to the guardian for the amount of the two unapproved drafts. Myerowich v. Emigrant Industrial Savings Bank, 172 N. Y. Supp., 540. 36 B. L. J. 26.

§330. Deposit in two names.

A mother deposited money in a bank in the joint names of herself and her daughter. At the time of making the deposit she delivered to the bank this written statement: "This account and all money thereby credited to it belongs to us as joint tenants and will be the absolute property of the survivor of us, either and the survivor to draw." On the mother's death it was held that the daughter was entitled to the fund. New Jersey T. G. & T. Co. v. Archibald, N. J., 107 Atl. Rep. 472. 36 B. L. J. 747.

§335. Unclaimed deposits.

A deposit of $15,000 was made in 1868. The depositor died in 1892. Under the provisions of the California Bank Act the bank reported that there had been no deposits or withdrawals for a period of twenty years prior to January 1, 1917. The account then amounted to $12,525.12. On March 16, 1917, the public administrator was granted letters of administration and on the following day made demand on the bank. The demand being refused, the administrator brought suit and the Attorney General intervened in behalf of the state. It was held that the administrator was entitled to the deposit. Mathews v. Savings Union Bank, Cal., 184 Pac. Rep. 418. 36 B. L. J. 881.

ESTATES.

Descent of real property.

Where a person dies without making a will his real and personal property is divided among his heirs or next of kin in accordance with statutory provisions applicable thereto. 36 B. L. J. 849, 850.

Estate by curtesy.

Where a woman dies intestate as to all or part of her real property her surviving husband is entitled to curtesy therein; that is he is entitled to a life estate in such real estate as is not devised by will, provided that there was issue born of the marriage. Young v. Blake, 163 N. Y. App. Div. 501. 36 B. L. J. 848.

EXECUTORS AND ADMINISTRATORS.

§347. Appointment.

The widow of a man who died without leaving a will was unable to read or write English and, therefore, not entitled to letters of administration under the New York Code. The next of kin were nonresident aliens living in France. Upon the application of one who petitioned as next friend of the decedent letters were issued. The widow moved to have the letters revoked on the ground that her renunciation had been obtained by fraud. It was held that the letters would not be revoked, there being no charge of unfitness against the petitioner. In re Greissier's Estate, 176 N. Y. Supp. 700. 36 B. L. J. 667.

FORGED PAPER.

§365. Bank allowed to recover money paid on check bearing forged signature.

The plaintiff sold an automobile, receiving a check in part payment. The check was signed by the purchaser in the name of his mother and the plaintiff saw him sign it. The plaintiff indorsed the check and deposited it to his credit in the defendant bank, on which it was drawn. Later in the day the bank charged the check back to the plaintiff's account on the ground that it was an overdraft and also that the signature was made without authority. It was held that the fact that the check was an overdraft did not authorize the bank to charge it back. And ordinarily a bank may not charge back a check, in a case of this kind, where it subsequently discovers that the drawer's signature was forged. But in this case the plaintiff received the check without inquiry, although he knew that it was signed in the drawer's name by another person, and he did not inform the bank of the circumstances. In this he was negligent and it was held that, therefore, the bank was entitled to charge the check against his account. Woodward v. Savings & Trust Co., N. C., 100 S. E. Rep. 304. 36 B. L. J. 835.

§367. Liability of drawee bank to drawer where check paid on forged indorsement.

The plaintiff, who was a depositor in defendant bank, signed a number of checks and delivered them to the bookkeeper to be used in carrying on his business. Upon leaving the plaintiff's employ the bookkeeper retained one check, wrote in a name as payee, filled out the check for $600, and collected it. It was held that since the loss was due to the negligence of the plaintiff in leaving the

blank check in the possession of his bookkeeper the bank was entitled to charge the amount against the plaintiff's account. Edelen v. Oakland Bank, Calif., 178 Pac. Rep. 737. 36 B. L. J. 265.

§382. Collecting bank liable to payee of check collected on forged indorsement.

The secretary of the plaintiff corporation, acting without authority, indorsed the corporation's name on the back of a $5,000 check payable to the corporation. Under this indorsement he placed his own name followed by the word "Secretary," and deposited the check to his individual credit in the defendant bank. The bank had had no previous dealings with the corporation. The secretary subsequently withdrew and appropriated part of the proceeds of the check. It was held that the bank was liable to the corporation for the full amount of the check. Buena Vista Oil Co. v. Park Bank, Calif., 180 Pac. Rep. 12. 36 B. L. J. 396.

§393. Liability of drawer to purchaser of instrument with forged indorsement.

The defendant bank sold to the plaintiff a draft on New York payable to the order of a mining company. This draft was subsequently paid by the drawee on a forgery of the payee's indorsement. It was held that while the plaintiff might have a cause of action against the drawee bank, and while that bank might be able to recover from the defendant bank, the plaintiff had no claim against the defendant. Folge v. Mechanics' Laclede Bank, Mo., 208 S. W. Rep., 854. 36 B. L. J. 344.

Criminal liability.

The defendant sent a telegram to a woman, which he signed in the name of her son, asking her to send $150. He received a check payable to the son's order, which he indorsed and cashed. It was held that he was guilty of the crime of forgery. People v. Wholey, 177 N. Y. Supp. 685. 36 B. L. J. 831.

GIFTS.

§399. Gift of bank deposit.

A savings bank depositor delivered to the bank a written order directing the bank to add the name of her uncle to the account, so that it would read, "payable to either or to the survivor." She had the uncle sign a signature card, which she mailed to the bank. Upon her death it was held that the uncle was entitled to the deposit as against her estate, even though the pass book was never delivered to the uncle. Delivery of the pass book is not necessary to the creating and passing of a joint title in a savings deposit. Marston v. Industrial Trust Co., R. I. 107 Atl. Rep. 88. 36 B. L. J. 749.

A savings bank depositor gave the key to her strong box to a niece with instructions to turn it over to the depositor's daughter. Shortly afterwards and just before her death the depositor told her daughter that the contents of the strong box were hers. The box contained the savings bank pass book. After the depositor's death it was held that the daughter was entitled to the bank account as against the depositor's administrator. Allen v. Smith, Calif., 176 Pac. Rep., 365. 36 B. L. J. 101.

GUARDIANS.

See National bank as special guardian, §608.

§408. Liabilities.

A guardian was directed by a court order to invest certain guardianship funds in a real estate mortgage. Instead of doing this he deposited the money in a bank and the bank subsequently failed. It was held that the guardian was liable for the amount of the loss. In re Jiskra's Estate, Wash., 182 Pac. Rep. 961. 36 B. L. J. 771.

A guardian is under a duty to attend to the collection of rents of real estate belonging to his ward, and he is responsible for his failure to make such collections. Hughes v. Green, S. C., 98 S. E. Rep. 201. 36 B. L. J. 257.

HOLDERS IN DUE COURSE.

§410. Payee as holder in due course.

The payee of a note may be a holder in due course. Johnston v. Knipe, Pa., 105 Atl. Rep. 705. 36 B. L. J. 330.

§412. Holder must take without notice of defect.

The note sued on was payable "to the order of myself." It was signed by the maker and then indorsed by him. The plaintiff purchased it for value from a person, who had obtained it by fraud from the maker. The court held that, while the note was unusual in form, it was not so unusual as to put the purchaser on inquiry and require him to investigate before taking the note. Notwithstanding the form, the purchaser was a holder in due course and entitled to enforce the note against the maker. Ochsenreiter v. Block, S. D., 173 N. W. Rep. 734. 36 B. L. J. 769.

The fact that a bank, purchasing a certificate of deposit issued by an-

other bank, knew that the person offering the certificate for sale had received the same as a gift, does not affect the purchasing bank's standing as a holder in due course. White v. Wadhams, Mich., 170 N. W. Rep. 60. 36 B. L. J. 181.

§420. Holder must take in good faith.

The defendant merchant gave his note to a company in consideration of its services in staging a popularity contest for the merchant and furnishing him with prizes to be used in the contest. The contest involved fraudulent methods of operation. The company transferred the note to a person who had knowledge of its method of doing business. It was decided that he was not a holder in due course and could not recover on the note. Harrison v. Perry, Ky., 212 S. W. Rep. 911. 36 B. L. J. 751.

§421. Holder must take instrument before maturity.

Where the payee of a promissory note transfers it after maturity, the maker is entitled to offset against the transferee a claim, existing against the payee at the time of the transfer, and later reduced to judgment. Gould v. Svensgaard, Minn., 170 N. W. Rep. 595. 36 B. L. J. 204.

The fact that the purchaser of a check receives it four days after its date does not put him upon notice and does not open the check to defenses good as between the drawer and payee. Hudson Boiler Co. v. Cardillo, 174 N. Y. Supp. 638. 36 B. L. J. 338.

§424. Holder must take for value.

Where the payee of a note discounts it with a bank the mere fact that the bank credits the amount of the proceeds to the payee's account does not make the bank a holder for value, in the absence of proof that the account was drawn upon by the payee. Central Savings Bank v. Stotter Mich., 174 S. W. Rep. 142. 36 B. L. J. 818.

§428. Rights of holder in due course.

The defendant signed a blank note and delivered it to the cashier of the plaintiff bank to be used in the purchase of certain corporate stock, the cashier acting as her agent in the transaction. After investigation she decided that the stock was worthless and notified the bank, by a letter addressed to its cashier, that she did not wish to buy it. The cashier, however, filled out the note, received the money from the bank and purchased the stock with it. In an action on the note by the bank it was held that the defendant could not set up the defense of failure of consideration and that the bank could recover on the note. Clardy v. American Trust & Sav. Bank, Tex., 108 S. W. Rep. 930. 36 B. L. J. 353.

§437. Burden of proof.

When a bank brings an action on a note held by it and the maker shows that it was obtained from him by fraud, on the part of the person who sold it to the bank, the burden is on the bank to show that it is a holder in due course: That is, the bank must show that the note was regular upon its face and that it was purchased before maturity, for value and without notice that the maker had any defense. Navajo-Apache Bank v. Wakefield, Ariz., 180 Pac. Rep. 529. 36 B. L. J. 591.

INDORSEMENTS.

§441. Place of indorsement.

An indorsement may be written on the face of an instrument with like effect as if written on the back. Where the payee of a note, for the purpose of transferring it, wrote his name under the name of the maker, it was held that he was liable as an indorser. Fisher Lumber Co. v. Robbins, Kans., 180 Pac. Rep. 264. 36 B. L. J. 502.

§464. Warranties of qualified indorsers.

One who indorses a promissory note "without recourse in any way" is liable to a bona fide purchaser of the note if the signature of one of the makers turns out to be a forgery. Miller v. Stewart, Tex., 214 S. W. Rep. 565. 36 B. L. J. 773.

§465. Warranties of restrictive indorsers.

An indorsement "pay to any national bank or order," does not guarantee prior indorsements, but a bank, so indorsing a check and presenting it to the drawee, was held liable to the drawee, where a prior indorsement was forged, as for money paid under a mistake of fact First Nat. Bank vs. City Nat. Bank, 180 Mass. 130, 65 N. E. Rep. 24. 36 B. L. J. 73.

An indorsement "for collection" carries with it a warranty of the genuineness of prior indorsements. In re Ziegenheim, Mo., 187 S. W. Rep. 893. 36 B. L. J. 74.

INSANE PERSONS.

§469. Negotiable paper of insane persons.

Where a bank loans money on a promissory note the maker cannot defend on the ground that he was insane at the time, unless it is also shown that the bank had knowledge of the insanity or knowledge of such facts that it should have been aware of the maker's condition. Merchants' National Bank v. Coyle, Minn., 174 N. W. Rep. 309. 36 B. L. J. 886.

INTEREST.

§471. Construction and validity of interest clause.

An installment note for $7,200 provided for payment in the following manner:

"The sum of $1,000 on or before October 27th, 1912, with interest at the rate of 7 per cent per annum, payable at maturity; The sum of $2,000 on or before one year; the sum of $2,000 on or before two years; the sum of $2,000 on or before three years, with interest at the rate of 7 per cent per annum, payable semi-annually."

It was held that, under a proper construction of this clause, each of the installments bore interest, and not merely the first and last. Stoddart v. Golden, Calif., 178 Pac. Rep. 707. 36 B. L. J. 266

LIBEL AND SLANDER.

§491. Libel and slander.

A publisher printed in his newspaper an article to the effect that he had deposited $100 in the plaintiff bank and had not been given credit therefor, as a result of which when later checks were presented he was informed that his account had been overdrawn. It was held that this statement was not libelous per se, that is, it did not necessarily imply that the bank had been guilty of larceny. It might have been construed merely to mean that the bank had been guilty of nothing more than carelessness. It was further held that, where the trial court had directed judgment in favor of the plaintiff such judgment should be reversed and a new trial ordered. The words used being ambiguous, their meaning and interpretation should have been passed upon by the jury. First Nat. Bank v. Winters, N. Y., 121 N. E. Rep. 459. 36 B. L. J. 201.

LIEN AND SET OFF

§510. Effect of taking collateral.

Under the statutes of California a bank may apply its customer's deposit to the satisfaction of a matured debt, owing to it by the customer, irrespective of the consent of the customer to such application A bank may not, however, apply the deposit to the satisfaction of a note secured by mortgage. First Nat. Bank v. Coplen, Calif., 179 Pac. Rep. 708. 36 B. L. J. 364.

Set off against insolvent bank.

Upon the insolvency of a bank a depositor, who is indebted to the bank on a promissory note, may set off his deposit against the note. He may set off not only his individual deposit, but also funds which he has on deposit in the bank as trustee for another and for which he is personally liable. Funk & Son v. Young, Ark., 210 S. W. Rep. 143. 36 B. L. J. 510

LOAN AND DISCOUNT

Loan to deceive bank examiner.

A bank in failing circumstances was told by the bank examiner that it would have to rehabilitate its reserve. It borrowed $25,000 from the defendant bank on a demand note. The money was placed to the failing bank's credit but was not to be drawn against, and the note provided that the defendant might, at its option, charge the note off against the deposit. Later the borrowing bank failed, and it was held that the liquidator was entitled to recover the $25,000 from the defendant; it was contrary to public policy for the bank to authorize one of its creditors to pay himself out of the bank's reserve fund to the prejudice of other creditors in the event of the failure of the bank. Feliciana Bank v. City Bank, Ala., 80 So. Rep. 600, 36 B. L. J.

MAKER.

§543. Liability of maker.

The maker of a promissory note cannot escape liability thereon by showing that he signed the note without reading it, in the mistaken belief that he was signing a receipt for a deed which was delivered at the same time, where it appears that he is able to read, that no misleading device amounting to fraud was used, and that there was no fiduciary or confidential relation between the parties.

Twyman v. Avera Loan Co., Ga., 98 S. E. Rep. 252. 36 B. L. J. 252

MORTGAGES.

Chattel Mortgages.

§576. Time of filing.

The Lien Law of New York declares that a chattel mortgage shall be absolutely void if not filed within a reasonable time. Under this statute it is held that a delay of six days in filing a chattel mortgage did not render it void under the circumstances presented. In this case the person who complained of the mortgage held a note, made by the mortgagor before the mortgage was executed, which matured after the mortgage was filed. This party obtained a judgment on the note. It was held that the mortgagee was entitled to the mortgaged property as against the judgment creditor. In cases of this kind what is a reasonable time depends upon the circumstances of each particular case. Trimble v. Brown Green Co., 172 N. Y. Supp. 726. 36 B. L. J. 9

§580. Description of mortgaged property.

A chattel mortgage described the mortgaged property as "One horse, one milk wagon, two buggies, two harnesses, ten cows, two hundred fowls." It appeared that the mortgagor had property of this kind on his premises, and there was no evidence that he had any other property of a similar kind. It was held that the description was not so indefinite as to render the mortgage invalid. Simmons v. Carroll, Mass., 122 N. E. Rep. 408. 36 B. L. J. 342.

§591. Sale of mortgaged property.

One who loans an automobile dealer money, with which to buy cars for re-sale, and takes a mortgage on the cars as security, in the absence of a stipulation to the contrary, impliedly consents to the sale of any such automobile to any buyer thereof and cannot claim a lien as against such buyer, whether the buyer knows of the mortgage or not. Cudd v. Rogers, S. C., 98 S. E. Rep. 796. 36 B. L. J. 258.

A Nebraska statute makes it a felony for the mortgagor of personal property to sell or dispose of any part of it "to any person or body corporate" without the written consent of the mortgagee. It was held that a mortgagor of an automobile who sold the automobile to a partnership came within the meaning of the statute and was subject to its penalties. State v. Stapel, Neb., 170 N. W. Rep. 665. 36 B. L. J. 258.

§593. Conflict of laws.

Where a chattel mortgage is executed in one state and the mortgaged property is located in another state, it is held, as a general rule, that the law of the state where the property is located controls as to the validity and effect of the mortgage Mackey v. Pettijohn, 6 Kans. App. 57. 36 B. L. J. 453.

Waiver of mortgagee's rights.

The plaintiff bank held a chattel mortgage on a crop of grain, which mortgage had been duly recorded. The mortgagor transferred the crop to the defendant and the cashier of the plaintiff bank was present when the agreement was made. The cashier, however, said nothing about the bank's mortgage and defendant had no knowledge of its existence. It was held that the cashier's action resulted in a waiver of the bank's rights under the mortgage and that it could not enforce the mortgage against the defendant. Ravinia State Bank v. Kirkpatrick, S. D., 173 N. W. Rep. 863. 36 B. L. J. 825

Real Estate Mortgages.

§602. Foreclosure.

The Federal Soldiers' and Sailors' Relief Act of March 8, 1918, which, among other things, prohibits the foreclosure of a mortgage against a person in the military service, except under order of court, is not limited to mortgaged property used by a soldier or sailor or his dependents for business or dwelling purposes, nor to cases where the mortgagee knew, or had reason to know, who the owner was. It applies to every case where the person in the service is the legal or equitable owner of the mortgaged property. Hoffman v. Charlestown Bank, Mass., 121 N. E. Rep. 15. 36 B. L. J. 22.

§603. Conflict of laws.

The validity of a mortgage on real estate is governed by the law of the state where the property is situated. If a married woman executes a mortgage, without her husband joining, in a state where such a mortgage would be valid, conveying land in another state, where the law requires the husband to join, the mortgage would not be valid in the latter state and could

not be enforced. Swank v. Huffnagle, 71 Ind. 53. 36 B. L. J. 452.

NATIONAL BANKS.

§608. Powers of national banks.

Under section 2352 of the New York Code of Civil Procedure and section 11-k of the Federal Reserve Act, as amended September 7, 1918, a national bank may be appointed special guardian by the court in a proceeding to sell real estate belonging to an infant. Matter of Mollineaux, N. Y. Sup. Ct., Oct. 15, 1919. 36 B. L. J. 828.

A national bank engaged in cotton speculation, the transactions being carried on in the name of the cashier It was understood that the profits, if any, belonged to the bank and that the bank would bear any losses. A loss of $3,000 resulted, which, on the books of the bank, appeared as an overdraft by the cashier. In order to conceal the facts from the bank examiner, the cashier and his wife executed notes secured by mortgages to the president's clerk, who assigned them to the bank. It was agreed that the mortgages would not be recorded and that the notes would not be enforced. Seven months afterwards the mortgages were recorded and later the bank brought suit on the notes. It was held that the cotton deals were entirely outside the powers of a national bank and that, the entire transaction being unlawful, the bank would not be permitted to enforce the notes. First Nat. Bank v. McKown, Okla., 176 Pac. Rep. 245. 36 B. L. J. 86.

§616. National bank liable as guarantor.

A national bank has no power to become surety or guarantor of the obligation of another person. A national bank, however, has the power to borrow money. A person was indebted to a national bank and was unable to pay. The bank put him forward as a borrower and gave him a letter guaranteeing the repayment of the loan made to him. The proceeds of the loan were all received by the bank. It was held that the bank was liable on the guaranty to the person who made the loan. Ellis v. Citizens' Nat. Bank, N. M., 183 Pac. Rep. 34. 36 B. L. J. 740.

NOTARIES.

§672. Qualification of notary to take acknowledgment.

A deputy county clerk, although not formally reappointed during his principal's second term, continued to act as deputy with the knowledge and consent of his principal and of the general public. It was held that the acknowledgment of a deed, taken before him, was valid and that the deed was entitled to be placed on record, the parties having no notice of the deputy's disability. Holland v. Stubblefield. Ky., 206 S. W. Rep. 459. 36 B. L. J. 198

§684. Acknowledgment before stockholder invalid.

The fact that a notary is a stockholder in a corporation which is beneficially interested in a transac, tion, disqualifies him from taking the acknowledgment on an instrument executed in connection with the transac-beneficially interested in a transaction. Decisions of Texas courts supporting this view are Miles v. Kelley, 16 Tex. Civ. App. 147; Workmen's Mutual Aid Association v. Monroe, 53. S. W. Rep. 1029. 36 B. L. J. 222.

NOTICE OF DISHONOR.

§703. Accommodation indorser.

The defendant was general manager and a stockholder of a corporation which executed a promissory note payable to the plaintiff. Before the note was delivered to the payee the defendant indorsed it in blank for accommodation. It was held that the defendant could not be regarded as a guarantor but that his liability was that of an indorser, and that he was discharged because no notice of dishonor was given to him. Tucker v. Mueller, Ill., 122 N. E. Rep. 847. 36 B. L. J. 391.

§706. Sureties.

A person who signs his name on the back of a promissory note before delivery to the payee and writes the words "as surety" after his name is liable as a surety and not as an indorser. He is not entitled to notice of dishonor. Stephens v. Bowles, Mo, 206 S. W. Rep. 589. 36 B. L. J. 117.

§734. Failure to give notice not excused.

The plaintiff bank, holder of a note, delayed giving notice of dishonor to an indorser for six or seven days, because a line was drawn through the indorser's signature and the plaintiff wanted to find out why this had been done It was held that this was not sufficient ground to excuse the giving of notice in proper time. Emerson etc. Bank v. German American Trust

Co., Colo. 176 Pac. Rep. 472. 36 B. L. J. 125.

737. Time for giving notice.

Where a check delivered in one state is drawn on a bank in another state, the time within which notice of dishonor should be given to the drawer is regulated by the law of the state in which the check is payable. Wells Fargo & Co. v. First Nat. Bank, Ind., 123 N. E. Rep. 700. 36 B. L. J. 762.

§749. Waiver of notice.

A director of a corporation indorsed for accommodation a note made by the corporation, payable to a bank. The note was not paid at maturity and kas protested, but the bank neglected to give the indorser formal notice of dishonor. Subsequently the indorser admitted his liability on the note and suggested to the bank a plan of settlement. It was held that he thereby waived the bank's failure to give him notice of dishonor and rendered himself liable on the note. First Nat. Bank v. Anderson, Va., 99 S. E. Rep. 561. 36 B. L. J. 593

OFFICERS OF BANKS.

§764. Liability bank for acts of president.

The president of the defendant bank advised the plaintiff to purchase an interest in a buisness, falsely representing that the business was solvent and making money. He told the plaintiff that he had no connection with the business, while, in reality, he was a partner. The money which the plaintiff paid for the interest was used to pay notes of the firm held by the defendant bank. It was held that the bank was liable to the extent of the amount which it received in payment of the notes. Abmeyer v. German American Bank, Kans., 179 Pac. Rep. 368. 36 B. L. J. 416.

§766. Authority of cashier.

A corporation had borrowed money from the plaintiff bank to the limit of its credit. The bank loaned an additional $3,000 to the corporation on the individual note of the defendant, who was a stockholder and secretary of the corporation. On the following day the cashier of the bank demanded repayment on the ground that the bank examiner had raised objections. At the cashier's request the defendant gave him a check payable to him individually. The check was signed by the defendant as secretary of the corporation. The cashier deposited the check to his own credit in the bank and the latter retained the note. In an action by the bank on the note it was held that there had been a valid payment. A judgment in favor of the bank was reversed and a new trial ordered. National Bank of San Mateo v. Whitney, Calif., 183 Pac. Rep. 36 B. L. J. 841.

§781. Liability of bank for cashier's act.

The cashier of the plaintiff bank and the defendant were both interested in a corporation which had put out a bond issue. The corporation needed money and the cashier suggested that the defendant give his notes to the bank for $10,000 for security for the notes and the $10,000 was credited to the corporation's The bonds were left with the bank as which he received $10,000 of the bonds. account. Later the defendant insisted that the bonds be sold and applied to the notes. Instead of doing this the cashier appropriated the bonds to his own use. It was held that the bank was responsible for the cashier's act and that it could not enforce the notes against the defendant. Mitchell State Bank v. Schaefer, Wis., 173 N. W. Rep. 230. 36 B. L. J. 676.

The proceeds of a life insurance policy were payable to the children of the insured. The cashier of a bank solicited the deposit for his bank and told the widow of the insured that, if she would deposit the money in his bank, he would have her appointed guardian and arrange for her bond. Later he informed her and the insurance company that she had been appointed guardian and the money was paid over to the widow who deposited it in the bank. The statement as to the appointment was entirely false. The cashier then had the widow withdraw the money and by various methods managed to embezzle it. It was held that the cashier was acting as the agent of the bank in the transaction, that it was chargeable with his knowledge of the wrongdoing and that it was liable for the money embezzled. Tesene v. Iowa State Bank, Iowa, 173 N. W. Rep. 918. 36 B. L. J. 892.

§789. Cashier's term of office.

Under the National Bank Act, cashiers of national banks hold office subject to dismissal at the pleasure of the board of directors Where the cashier of a national bank is elected for a fixed time, and is dismissed prior to the expiration of the period

for which he was employed, he cannot recover his wages for the unexpired period, even though dismissed without cause. First Nat. Bank v. Colquitt, Ga., 98 S. E. Rep. 402. 36 B. L. J. 347.

Discharge of manager.

The plaintiff was employed by the president and secretary of the defendant bank as manager of its bond department for a period of one year. After about four months he was discharged by the secretary for alleged disobedience of the latter's orders with regard to the purchase of certain bonds. The plaintiff was unable to find employment for the balance of the year and he sued the bank for the salary which he would have received, had he been retained in the bank's employment until the end of the year. The jury found for the plaintiff. The question whether there had been an improper dismissal of the plaintiff was one for the jury to determine. Bacon v. Bankers' Trust & S. Bank. Minn., 173 N. W. Rep. 719. 36 B. L. J. 756.

§811. Notice to officer as notice to bank.

A bank is chargeable with knowledge of facts known to an officer transacting its business and pertaining to matters within the scope of its business. This doctrine is based on the ground that it is the duty of the officer to communicate his knowledge to the bank and it is to be presumed that he has performed this duty. State Bank v. Adams, Minn., 170 N. W. Rep. 925. 36 B. L. J. 315.

PARTNERSHIP.

§834. Authority of partner.

The plaintiff bank purchased five $1,000 bonds from the defendants, who were partners engaged in the business of buying and selling securities. On the authorization of one of the members of the firm, the cashier delivered to the bank a written guaranty of payment of the bonds. The company defaulted on its bonds. It was held that the other member of the firm was not liable on the guaranty. One member of a commercial partnership has no implied authority to bind the other members upon contracts of guaranty or suretyship. First Nat. Bank v. Farson, N. Y., 123 N. E. Rep. 490. 36 B. L. J. 575.

PAYMENT

§881. Checks signed by agent.

At the time of making a deposit the depositor gave verbal instructions to the bank to pay checks signed in the depositor's name by her son. It was held that this protected the bank in paying checks so signed, even though the Negotiable Instruments Law of Kentucky provides that the "signature of any party may be made by an agent duly authorized in writing." The statute does not apply here because the checks are not the basis of liability. The bank merely paid out the money pursuant to the contract of deposit. It should be noted that in most other states the Negotiable Instruments Law and agent's authority to sign negotiable paper should be in writing. Pierson v. Union Bank & Trust Co., Ky., 205 S. W. Rep. 906. 36 B. L. J. 15.

§884. Bank's liability for refusing depositor's check.

The plaintiff drew a check for $200 on the defendant bank and delivered it to her broker to protect stock which the broker was carrying for her on margin. The bank refused the check in the mistaken belief that the deposit was insufficient. This was due to a failure to credit a previous deposit of $40. The broker thereupon sold the collateral which the plaintiff had put up. On the trial damages were awarded to the plaintiff for the amount of the collateral sold. On appeal it was held that this was erroneous for the reason that there was no evidence as to the subsequent course of the stock market nor any proof that the plaintiff would not have lost the $200 as well as her collateral had the check been cashed. A new trial was granted. Gutman v. Bronx Borough Bank, 173 N. Y. Supp. 477, 36 B. L. J. 176; Affirmed, 177 N. Y. Supp. 173. 36 B. L. J. 675.

The plaintiff, having $398.00 on deposit in the defendant bank, drew four checks aggregating $222.98. Before these checks were presented a complaint was served on the bank in an action by the plaintiff's wife to recover one-half of the deposit. Upon presentment of the checks, the bank returned them and a clerk marked them "Account closed" by mistake. It was held that the bank was pustified in withholding payment of ,the checks, and that the plaintiff was entitled to damages by reason of the checks being erroneously marked "Account closed," but that, it not appearing that there

was any malice on the part of the bank, the plaintiff was entitled to nominal damages only. Wildenberger v. Ridgewood Nat. Bank, 175 N. Y. Supp. 430. 36 B. L. J. 505.

The plaintiffs were partners in a grocery business and kept their account in the defendant bank. Certain checks, which they delivered to a telephone company and to wholesale dealers, were refused payment by the bank in the mistaken belief that the deposit against which they were drawn was insufficient. Upon the trial the jury awarded the plaintiff nominal damages in the sum of $50.00. The plaintiffs appealed and the appellate court held that the plaintiffs were entitled to substantial damages. McFall v. First Nat. Bank, Ark., 211 S. W. Rep. 920. 36 B. L. J. 481.

§893. Agreement to honor checks.

The defendant bank authorized a dealer in hogs to issue checks against it in payment for hogs bought by him and agreed to pay such checks out of the proceeds of the sales which were to be deposited in the bank. Such a check was issued to the plaintiff and the proceeds of the sale, more than enough to pay the check, came to the hands of the bank. The bank, however, refused to honor the check. It was held that the plaintiff could recover against the bank. The rule requiring a certification to be in writing has no application to a case of this kind. Goeken v. Bank of Palmer, Kans., 179 Pac. Rep. 321. 36 B. L. J. 428.

PLEDGE AND COLLATERAL

Delivery to wrong person.

A bank which delivers collateral to the wrong person is liable for the value thereof to the real owner Murray v. Farmers' & Merchants' Bank, Mo., 206 S. W. Rep. 577. 36 B. L. J. 115.

PRESENTMENT FOR PAYMENT.

§923. Necessity for presentment.

It is not necessary to present for payment a promissory note, payable on demand, in order to hold liable the maker of the note. All that is required of the holder is that he commence action against the maker within the period of the statute of limitations. Lebanon State Bank v. Garber, Kans., 181 Pac. Rep. 572. 36 B. L. J. 587.

RESTRAINT OF TRADE

§976. Restraint of trade.

A corporation, engaged in the manufacture of toilet preparations, established certain prices, at which its products were to be sold by its wholesale and retail dealers. Any dealer found cutting prices was placed on a suspended list and no more goods were sold to him. The corporation neither had nor sought a monopoly and the prices were reasonable. The corporation's sole object was the protection of its business. It was held that such action did not violate the Sherman Anti-Trust Act, nor any other law of the United States. United States v. Colgate, 253 Fed Rep. 522. 36 B. L. J. 40.

A corporation engaged in the manufacture of toilet articles may notify wholesale and retail dealers that its goods are to be resold at certain specified prices and it may refuse to sell further goods to any dealer found selling at reduced prices. Such action on the part of the corporation does not violate the provisions of the Sherman Anti-Trust Act, nor any other law of the United States. U. S. v. Colgate, U. S., 39 Sup. Ct. Rep. 465. 36 B. L. J. 565.

SAVINGS BANKS.

Payment of deposit.

The mere fact that a person presenting a draft on a savings bank account has the pass-book in his possession will not protect the bank in making payment where the draft is forged, even though a rule printed in the pass-book provides that all payments made to persons producing pass-books shall be deemed valid. In such case the burden is on the bank to establish that it exercised ordinary care and diligence in making the payment. Noah v. Bowery Sav. Bank, N. Y., 122 N. E. Rep. 235. 36 B. L. J. 333.

SIGNATURE OBTAINED BY FRAUD

§996. Liability of maker.

Under a Minnesota statute, added to the Negotiable Instruments Law, a person is not liable on his signature to a promissory note where it appears that the note was obtained by fraud, that he did not know that the instrument he was signing was a note, and that in so signing he was not guilty of negligence National Farmers' Bank v. Nygren, Minn., 169 N. W. Rep. 228. 36 B. L. J. 13

STATUTE OF LIMITATIONS

§1009. Action on check or draft.

A check dated March 14, 1907, was not presented for payment until February 20, 1917 Payment was refused and the payee started suit against the drawer. It was held that the check had been outlawed by the six years' statute of limitations. In such a case the statute begins to run, not on the date of presentment, but at the expiration of a reasonable time for making presentment. A reasonable time was here held to be the close of business hours on the day after the check was delivered to the payee, it appearing that the check was delivered to him in the city where the drawee bank was located. Colwell v. Colwell, Ore., 178 Pac. Rep. 916. 36 B. L. J. 492

STOCK AND STOCKHOLDERS

§1019. Increase and reduction of stock.

Upon the reduction of the capital stock of a bank, the liability to certain stockholders of other stockholders and officers, who squandered the assets of the bank, is not released. It is not a valid objection to the reduction of the capital stock of a bank that one of the stockholders will thereby be required to receive a fractional part of a share. Perry v. Bank of Commerce, Miss., 80 So. Rep. 332. 36 B. L. J. 171.

The plaintiff bank decided to increase its stock and the defendant subscribed for five shares. The defendant gave his note for the amount of the stock payable to another bank and the stock was deposited with the latter as security for the note. This bank gave the plaintiff bank credit on its books for the amount. The Comptroller was then notified that the increase had been subscribed and paid for and he issued his certificate authorizing the increase. Thereafter the defendant gave his note for the amount of the stock to the plaintiff and this note was used to satisfy the note already mentioned. The stock was then delivered to the defendant. In an action on the second note, it was held that the transaction was void, under the statutes of Texas and the Act of Congress prohibiting the issuance of national bank stock in consideration of a note, and that the note could not be enforced. Citizens Nat. Bank v. Stevenson, Tex., 211 S. W. Rep. 644. 36 B. L. J. 663.

§1032. Dividends.

While the declaration of dividends is a matter which rests in the discretion of the directors, this power is not to be abused or unreasonably exercised. In proper circumstances the directors can be compelled to declare a dividend at the instance of the stockholders. Dodge v. Ford Motor Car Co., Mich., 170 N. W. Rep. 668. 36 B. L. J. 284.

A corporation, which had paid no dividends on its common or its 6 per cent cumulative preferred stock for a period of nine years, then declared a dividend of 54 per cent on the preferred stock, covering the current year and all arrearages At the same time a dividend of equal amount was declared on the common stock. It was held that this was improper. In the absence of any limitation on the preferred stock all that the common stock was entitled to was a dividend equal to that of the preferred for the current year, that is 6 per cent. After that both classes of stockholders were entitled to share equally in the excess. Englander v. Osborne, Pa., 104 Atl. Rep. 614. 36 B. L. J. 33.

In the case of a contract to sell shares of stock in a bank, by which one party "agrees to sell" and the other "agrees to purchase," and the contract provides that the shares are to be paid for on or before a certain date, and nothing is said with reference to dividends, the dividends, declared while the contract is still executory, belong to the purchaser and not to the seller. Bank of Waverly v. Daily, Neb., 170 N. W. Rep. 183. 36 B. L. J. 178.

§1043. Statutory liability of stockholder.

Under the constitution and statutes of Texas a holder of stock in a bank is liable for the debts of the bank to the extent of the par value of the stock held by him If he transfers his stock his liability, as to the debts existing at the date of the transfer, continues for a period of one year after the transfer. This liability may be enforced by the Commissioner of Insurance and Banking. Austin v. Campbell, Tex., 210 S. W. Rep. 277. 36 B. L. J. 433.

Upon the death of the owner of shares of stock in a national bank the stock descended to his next of kin; who thereafter sold it in entire good faith to the cashier of the bank. Three years later the bank became insolvent and an assessment was levied against the stockholders. It was held that the next of kin were not liable for the assessment even though the transfer had

never been recorded on the books of the bank and the stock still stood in the name of the original holder. Keyes v. Myhre, Minn., 173 N. W. Rep. 422. 36 B. L. J. 679

The defendant was induced by misrepresentation to purchase shares of stock in a bank After the bank became insolvent and closed its doors, the defendant brought suit against the person, who sold the shares to him, to have the contract of sale set aside. In this suit he was successful. Later the receiver of the bank sued the defendant to recover twice the value of his stock, under the statute, for the benefit of the bank's creditors. It was held that the defendant was liable, notwithstanding the fact that the stock had been sold to him by fraud and that the sale had been set aside. Bundy v. Wilson, Colo., 180 Pac. Rep. 740. 36 B. L. J. 596.

STOPPING PAYMENT.

§1060. Notice to stop payment.

A check drawn on the defendant bank by the plaintiff came in by mail from another bank with instructions to remit in Portland Exchange. The defendant stamped the check "paid" and placed it on a spindle, but before it had charged it against the plaintiff's account or forwarded its draft in payment, the plaintiff came in and instructed the bank not to pay the check. The bank, contrary to this instruction, mailed its draft for the amount of the check. It was held that stamping the check "paid" and placing it on a spindle did not constitute payment or certification and that the bank was liable to the plaintiff for the amount of the check. Hunt v. Security State Bank, Ore., 179 Pac. Rep. 248. 36 B. L. J. 404

Where a bank had written notice not to pay checks, and subsequently refused the cancellation of the order because not signed by certain of drawer's officers, as required by corporate resolution, and cancellation was not again presented, subsequent payment of the checks was unwarranted, and the bank could not justify such payment by showing that the recipient was justly entitled to it. American Defense Soc. v. Sherman Nat. Bank, N. Y., 122 N. E. Rep. 695. 36 B. L. J. 355.

§1066. Stopping payment of certified check.

The drawer of a check had it certified and deposited it in escrow as a forfeit in the event that he failed to comply with the terms of a certain contract. After the deal had been called off the payee, the other contracting party, obtained the check, but before he could present it the drawer stopped payment. In an action by the payee against the drawee bank it was held that the latter was entitled to pay the money into court, have the drawer brought in as a party and make him and the payee litigate the question of the ownership of the fund. Bathgate v. Exchange Bank, Mo., 205 S. W. Rep. 875. 36 B. L. J. 18.

SURETIES.

§1081. Rights of surety after paying debt.

The defendant company induced a guardian to loan funds in her hands as guardian on a subordinate interest in a mortgage, in which the defendant held the prior interest. The guardian's interest was wiped out in a foreclosure suit. The investment by the guardian was illegal under the statutes of New York and the surety on her bond was required to make good the amount of the loss. It was held that the surety was entitled to hold the defendant liable for the amount. National Surety Co. v. Manhattan Mortgage Co., 174 N. Y. Supp. 9. 36 B. L. J 279.

An employee of the City of New York prepared fraudulent checks, purporting to be payable to different persons for services as jurors Upon obtaining the signature of the City Chamberlain on the checks he cashed them at different stores. It was held that the surety company, which furnished the employee's bond and which was responsible to the city for the amount of the defalcations, was subrogated to the city's rights against the drawee bank and that the bank was liable to the surety company for the amount of the checks. National Surety Co. v. National City Bank, 172 N. Y. Supp., 413. 36 B. L. J. 51.

TAXATION.

§1095. Taxation of national banks.

Under Section 5219, U. S. Revised Statutes, a national bank, which owns stock in another national bank, may be taxed by a state as such stockholder, but the stock may not be included as an asset of the bank owning it in assessing a tax against the stockholders of the latter bank. A national bank, however, may not be taxed by a state as a stockholder in a state bank and the stock of the state bank is to be included as an asset of the national bank in assessing a tax against the stockholders of the national bank.

Bank of California v. Richardson, U. S., 39 Sup. Ct. Rep. 165. 36 B. L. J. 268.

§1105. State banks.

Where the assessment of a state bank was increased without notice, by the county board of equalization, adding the value of state public building bonds held by the bank, which were exempt from taxation, the tax was illegal to the amount of such increase, and the bank's remedy was to pay the tax levied, and sue for recovery of the illegal portion. Bretz v. El Reno State Bank, Okla., 177 Pac. Rep. 362. 36 B. L. J. 165.

§1108. Inheritance tax—deposits.

Upon the death of a husband, the entire amount of a joint bank deposit standing in the name of the decedent and his wife, payable to the survivor, is subject to the inheritance tax, where the account was created subsequent to the taking effect of Chapter 64 of the Laws of 1915 amending the Tax Law. In re Dolbear's Estate. N. Y., 123 N. E. Rep. 381. 36 B. L. J. 486.

The Fed. Rev. Act of 1918 provides a penalty of not more than $500 for any person who, having any record or any other information concerning the estate of a deceased person, fails to exhibit the same upon the request of a properly authorized official. 36 B. L. J. 781.

§1109. Income tax.

The New York Income Tax Law and Regulations thereunder do not require New York corporations to withhold 1% of the amount due the holders of its bonds and stock. 36 B. L. J. 780.

TENDER.

Legal tender.

Silver coins of less than one dollar are legal tender to the extent of ten dollars and the minor coins are legal tender to the extent of twenty-five cents. U. S. Comp. Stat. Sec. 6573, 6574. 36 B. L. J. 782.

§1123. Amount tendered.

The tender of a sum in payment of a promissory note, which is less than the amount actually due on the note, does not stop the running of interest even as to the amount tendered. Barreda v. Merchants' Nat. Bank, Tex., 206 S. W. Rep. 726. 36 B. L. J. 120.

TRANSFER WITHOUT INDORSEMENT.

§1131. Effect of transfer without indorsement.

The fact that a person has possession of an unindorsed note, payable to the order of another person, does not raise a presumption of a holding in due course. Where the title is not transferred by indorsement the transfer must be proved by other evidence in order to enable the holder to recover against the maker. Korn v. Davis, 172 N. Y. Supp. 440. 36 B. L. J. 114.

TRUSTEES.

§1137. Duties and liabilities.

A promissory note was signed "Trustees of the Second Christian Church, I. S. Ervin, R. C. Moulton, Chairman, M. L. Everett." It was held that the signature did not disclose a principal and that the signers were individually liable, even though it was their intention to sign merely as agents of the church. Schuling v. Ervin, Iowa, 169 N. W. Rep. 686. 36 B. L. J. 46.

A will designating a trust company as trustee of a fund of $200,000, provided that the trustee should not be limited in making investments to the usual investments of trust estates. It also provided that the trustee should not be liable by reason of any investments it should make. In 1904 the trustee invested part of the fund in 200 shares of C. M. & St. P. R. Co. at $144.25 a share. It held this stock for 13 years and then, in September, 1917, sold it for $58.25. It was held that, while the provision exempting the trustee from liability might not protect the trustee from every conceivable loss, it was sufficient in this case to protect the trustee in retaining the stock as long as it did. The court took into consideration that the stock was in good repute at the time the investment was made, that it held its market value until about the commencement of the war and that it was a matter of general opinion that railroad securities would appreciate in value when the roads were taken over by the federal government. In re United States Trust Co., 178 N. Y. Supp. 125. 36 B. L. J. 888.

§1138. Investments.

A will directed that a portion of the estate be turned over to a trust company, as trustee for certain next of kin of the testator. It provided that the trustee "be limited to such investments as trustees are by law authorized to make." Among the securities constituting the trust fund which was turned over to the trustee were many which trustees are not authorized to retain or invest in. It was held that the fund should be invested only in securities authorized by law and that, if the trust company received and retained securities of a different character,

it did so on its own responsibility. In re Bernheimer's Estate, 175 N. Y. Supp. 594. 36 B. L. J. 413.

§1142. Sale of trust property.

A trustee under a will may sell shares of stock, without being authorized to do so by the court, where the stock is not one of the securities in which trust funds may be invested under the laws of the state. This is so even though the will authorizes the trustee to retain the stock "without regard to the requirements of the law concerning investments by trustees and executors." Guaranty Trust Co. v. U. S. Steel Co., 176 N. Y. Supp. 402. 36 B. L. J. 563.

§1143. Liability of persons dealing with trustees.

A savings bank account stood in the name of a woman in trust for her stepdaughter. She made inquiry at the plaintiff bank concerning a loan on the security of the pass-book and was told that if the account was transferred to her individual name the loan would be made. The account was transferred and the loan subsequently made without the knowledge or consent of the step-daughter. It was decided that, notwithstanding the fact that the plaintiff bank knew that it was making a loan to a trustee, for her individual purposes, upon the security of the trust fund, the plaintiff was entitled to hold the security as against the beneficiary of the trust. Corn Exchange Bank v. Manhattan Sav. Institution, 173 N. Y. Supp. 168. 36 B. L. J. 168.

USURY.

§1151. Bank holding back part of loan.

Where a national bank loans money at the highest legal rate of interest and holds back 20% of the amount loaned on general deposit and not subject to the borrower's check, charging interest on the entire amount, the transaction is usurious. In an action by the bank on the notes given by the borrower, it was held that the bank could recover only the principal amount of the loan and not the interest agreed upon by the parties, the penalty of twice the amount of the usurious interest paid and that this could be recovered only by a separate and independent action against the bank. Planters' Nat. Bank v. Wysong, N. C., 99 S. E. Rep. 199. 36 B. L. J. 653.

§1162. Penalties for usury.

Where a lender retains $400 out of an ostensible loan of $1,000, the fact that he pays part of the amount retained to his agent as a commission is immaterial on the question of usury. The borrower is entitled nevertheless torecover from the lender twice the amount retained under section 114 of the New York Banking Law. Krauss v. Clark, 177 N. Y. Supp. 182. 36 B. L. J. 670.

§1167. Massachusetts usury statute.

The Massachusetts usury statute provides that a loan of less than $1,000 may be discharged by the payment or tender of the principal sum and interest at the rate of 18 per cent per annum and $5 expenses. It is held that this statute applies to a loan for which renewal notes are given from time to time, each renewal made being for the amount of principal and interest then due. Koltin v. Brown, Mass., 123 N. E. Rep. 92. 36 B. L. J. 401.

WAREHOUSE RECEIPTS.

§1172. Effect of transfer.

An automobile company delivered three automobiles to a warehouse company and took negotiable warehouse receipts for them. The automobile company transferred the receipts to a bank for value. Later the plaintiff brought suit against the automobile company for $250 and seized the cars under a warrant of attachment. The bank intervened claiming title and right to possession of the cars. It was held that the transfer of the receipts passed title to the cars to the bank and that thereafter the plaintiff had no attachable interest in them, even though the bank had given the warehouse company no notice of the change in ownership. Vannett v. Reilly, N. D., 173 N. W. Rep. 466. 36 B. L. J. 671.

WILLS.

§1179. Construction and validity.

A will devised the estate to the executors, in trust to mortgage, sell, invest and reinvest. It then directed that, after the payment of certain legacies, the executors should transfer the remainder to the testator's sons, or to the son's lawful issue in the event of his death. It was held that this provision did not violate section 42 of the New York Real Property Law, which prohibits the creation of any estate which shall suspend the power of alienation for a longer period than during the continuance of two lives in being at the time of the creation of the estate. Tarditi v. Tomazzoli, 177 N. Y. Supp. 127. 36 B. L. J. 668.

Under the California statute it was held that a will, in the testator's handwriting, in the following form, was valid and should be admitted to probate:

"4/12/17th.

mod clark 351 jones st. progfeeld Apa Aparmass 201 I leev hore $2000.00 more cash money.

Jack Ollsen"

"My my is cleere, i leev hore alle

Jack Ollsen"

The will was construed by the court to mean that the testator left all of his property to Maude Clark, apartment 201, Brookfield Apartments, 351 Jones Street. In re Olssen Cal., 184 Pac. Rep. 23. 36 B. L. J. 875.

Testamentary capacity.

In New York females of 16 years and males of 18 years may make wills of personal property. Decedent Estate Law, Sec. 15. 36 B. L. J. 602.

In New York all persons except idiots, persons of unsound mind and infants may make wills of real estate. Decedent Estate Law, Sec. 10. 36 B. L. J. 602.

A person must be of sound mind and memory to be qualified to make a will. Matter of Carver, 23 N. Y. Supp. 753. 36 B. L. J. 602.

Execution of will.

In New York a will must be subscribed by the testator at the end of the will in the presence of two attesting witnesses, who must sign at the request of the testator. No seal is required. Decedent Estate Law, Sec. 21. 36 B. L. J. 603.

A will was drawn on a printed blank form, consisting of one sheet of paper, folded in the middle so as to make four pages, the fold being at the top. The attestation clause was at the bottom of the first page and the other three pages were blank. The space left for writing in the terms of the will not being sufficiently large, a notation "continued on back" was written on the first page and the balance on the bequests were written on pages 2 and 3. The will was signed in the blank space provided therefor on the first page. It was held that the will was not signed "at the end," as required by the New York statutes and that it was, therefore, not entitled to probate. In re Lowden's Estate, 175 N. Y. Supp. 591. 36 B. L. J. 431, 464.

The maker of a will, written in his own handwriting, showed it to the two witnesses and a notary public, explaining it was his will and requested them to sign as witnesses, which they did. The witnesses did not see the testator sign his name to the will, but they saw his signature on it at the time they signed. It was held that the will was properly executed under section 21 of the Decedent Estate Law of New York, and should be admitted to probate. In re Tacktian's Estate, 176 N. Y. Supp. 877. 36 B. L. J. 589.

The subscription of a testator is not at the end of the will, where it is followed by the date and a clause appointing executors. Matter of Gedney, 41 N. Y. Supp. 205. But where a will was signed just above the attestation clause it was held that the subscription was at the end of the will, though the date of the will was written below the attestation clause. Matter of Talbot, 154 N. Y. Supp. 1083. 36 B. L. J. 604.

The signature of a testator written in a blank space in the attestation clause was held to be sufficient where it appeared that he intended it as such, was so understood by the witnesses and that the signature was substantially at the end of the will. Matter of De Hart, 122 N. Y. Supp. 220. 36 B. L. J. 604.

It has been held that a testator's signature is sufficient, if, being physically incapacitated, he calls upon another to assist him to the extent of holding and guiding his hand, so long as it is his wish that his signature be thus made. Matter of Baumann, 148 N. Y. Supp. 1049. 36 B. L. J. 604.

And it has been held that a testator's signature is sufficient, though made by another person, where it appears that such person signed in the testator's presence and at his express direction and request. Robins v. Coryell, 27 Barb. (N. Y.) 556. 36 B. L. J. 604.

The usual place for the testator to sign is following the last clause in the will, at the place where the attestation clause begins. It has been held, however, that a signature of a will by the testator following the attestation clause is "at the end of the will." Matter of McDowell, 156 N. Y. Supp. 357. 36 B. L. J. 604.

Where a will was drawn on a single sheet of legal cap, folded so as to make four pages, and the writing commenced on the first page was continued on the fourth page and concluded on the second page with the signature oft he testator and witnesses, it was held that the will was signed at the end in compliance with the statute. Matter of Peiser, 140 N. Y. Supp. 844. 36 B. L. J. 605.

Although a testator acknowledged to the attesting witnesses that the instrument they were asked to sign was his will, the fact that the will was at the time so folded that the witnesses could not see the testator's signature rendered the execution invalid. In re Mackey, 110 N. Y. 611, 18 N. E. Rep. 433. 36 B. L. J. 605.

At the time of executing his will the testator must declare the instrument to be his last will and testament in order for it to be valid. Ex parte Beers, 2 Bradf. (N. Y.) 163. 36 B. L. J. 606.

The attestation clause is no part of the will and is not required as part of its due

execution by law. Jackson v. Jackson, 39 N. Y. 153. 36 B. L. J. 606.

Where the witnesses sign before the testator signs the will is not valid. Jackson v. Jackson, 39 N. Y. 153. 36 B. L. J. 606.

It is not necessary that the attesting witnesses sign in the presence of each other. Hoysradt v. Kingman, 22 N. Y. 372. Nor is it necessary that an attesting witness sign in the presence of the testator. Herrick v. Snyder, 59 N. Y. Supp. 229. But the witnesses must sign during the lifetime of the testator. In re Fish's Will, 34 N. Y. Supp. 536. 36 B. L. J. 607.

In New York the witnesses to a will must write opposite their names their respective places of residence, the penalty for a failure to do so being $50. Decedent Estate Law, Sec. 22. 36 B. L. J. 608.

To whom property may be left.

Under a New York statute a person leaving a wife, husband, child or parent can not leave by will more than one-half of his estate to charitable, religious or similar purposes. This statute does not apply to property left to municipal corporations. Matter of Crane, 12 N. Y. App. Div. 271, nor to property left to a university created by the regents. Matter of Morgan, 107 N. Y. Supp. 393. 36 B. L. J. 689.

There is no law requiring a person to leave any part of his or her estate to a surviving husband, widow or child. Dobis v. Armstrong, 160 N. Y. 584. 36 B. L. J. 685.

A voluntary unincorporated association, existing for charitable purposes, is incapable of taking property by devise; a devise of real property to such an association does not become valid upon the incorporation of the association, after the death of the testator, nor by a subsequent amendment to its charter, authorizing it to take the property, where it had no such authority at the time of the testator's death. White v. Howard, 46 N. Y. 144. But a devise in trust for a charitable association, unincorporated at the time of the execution of the will, is valid if the association is incorporated before the money becomes payable. Philson v. Moore, 23 Hun (N. Y.) 152. 36 B. L. J. 686.

Where the charter of a religious corporation, organized under the laws of the State of New York, permitted it to take property for its own use only and property was devised to it for the purpose of establishing a school in another state, it was held that the devise was void. Levy v. Levy, 33N. Y. 97. 36 B. L. J. 686.

Where property was devised to a bishop to be held in trust by him for the use of his church and the church was not authorized by statute or by its charter to take devises of property, it was held that the devise was invalid. McCaughal v. Ryan, 27 Barb. (N. Y.) 376. 36 B. L. J. 686.

Where the charter of a corporation contains no words, expressly authorizing it to take real property by devise, an enabling act passed by the legislature, investing the corporation with power to take any real estate by a previous devise, cannot be rendered lawfully retroactive so as to validate a devise by a testator, who died before the act was passed. Bonard's Will, 16 Abb. Pr. N. S. (N. Y.) 128. 36 B. L. J. 686.

The fact that a corporation is authorized by its charter to take property by "purchase" does not authorize it to take property "devised" to it. It was held that a provision in the charter of a corporation declaring it capable of "taking, purchasing, holding and conveying any real or personal estate" did not constitute authority to take property by devise. Auburn Theological Seminary v. Childs, 4 Paige (N. Y.) 419. 36 B. L. J. 687.

A gift by will to a subscribing witness is void where his testimony is required to prove the will, except in a case where the witness would have been entitled to a share in the estate in case the will was not established. A legacy to a witness is valid, where there are three witnesses and the will is proved by the testimony of the other two. Matter of Owen, 62 N. Y. Supp. 919. 36 B. L. J. 687.

A devise to an executor, by way of compensation for services to be rendered by him, is not rendered invalid by the fact that he signs as a witness; such a devise stands on the same footing as an executor's commissions. Pruyn v. Brinkerhoff, 57 Barb. (N. Y.) 176. 36 B. L. J. 687.

After born children.

Where a child is born to the testator or testatrix after making the will and such child is not provided for by any settlement, nor mentioned in the will, the child is entitled to the same share of the parent's estate as would have descended to him if there had been no will. Obecuy v. Goety, 102 N. Y. Supp. 232. This rule does not apply to adopted children. Matter of Gregory, 37 N. Y. Supp. 975. 36 B. L. J. 688.

§1181. Revocation of will.

If after making a will the testator marries and is survived by a husband, wife or issue of such marriage, the will is void as to them, unless they are provided for by some settlement or by provision in the

will or mentioned in the will in such way as to show an intention not to make such provision. N. Y. Decedent Estate Law, Sec. 35. 36 B. L. J. 690.

Where a testator tears up his will it is necessary that he have the intention of revoking it or there will not be any revocation. Consequently, in a case where the testator, at the time of destroying his will, was in such an excited frame of mind, as to incapacitate him from forming a reasonable and intelligent intention of revocation, it was held that the destruction of the will did not revoke it. In re Forman, 54 Barb. (N. Y.) 174. 36 B. L. J. 689.

Where a testator, whose will was in the custody of his brother, directed him to destroy it and the brother did not carry out the testator's instructions, it was held that there had been no revocation of the will. Matter of Evans, 98 N. Y. Supp. 1042. 36 B. L. J. 690.

The will of an unmarried woman is revoked by her subsequent marriage. In re McClure's Estate, 173 N. Y. Supp. 206. 36 B. L. J. 111.